

REMARKS:

The Office action mailed March 12, 2003 has been received and carefully considered. Reconsideration of the application as amended hereby is respectfully requested.

Claims 31 and 37 were rejected as anticipated by Pisharodi '100. Claim 31 has been amended to better define over Pisharodi in that in applicant's device, the spacing between the anterior ends of the upper and lower walls expands, whereas in Pisharodi's, the expansion is in the middle of the device. It is urged that Pisharodi fails to teach or suggest applicant's device as claimed in Claim 31. Claim 37 has also been amended to better distinguish over Pisharodi. In particular, Claim 37 calls for the anterior ends of the implant to expand and for a cover sized and shaped to accommodate such expansion. Pisharodi fails to teach anterior expansion or how to design a cover that accommodates such expansion, since the anterior ends of the Pisharodi device are fixed in position relative to each other. Therefore, Claim 37 is also urged to be allowable.

Claim 33 was rejected as anticipated by Nolan. Applicant's cover is shown, for example, in Figure 15 and identified by the numeral 204. Applicant's cover is independent or non integral with applicant's expansion cap and has a substantial elongate and generally linear surface 253 that operably engages the vertebrae

during use. The device shown in Nolan has a unitary screw in type cap which does not disclose or teach the invention as claimed. Further, Nolan in no way suggests how to make the cover with elongate generally linear surfaces, since same could not rotate with an integral expansion member and still provide the needed support to the vertebrae.

Claim 40 was rejected as being obvious over Nolan in view of Lahille. While Lahille teaches an expansion system that is posteriorly accessible and operated, applicant's Claim 40 now calls for a device where at least one of the post or expansion members are anteriorly accessible and rotated to move the expansion member along the post. Lahille does not teach this or suggest how to do so. During spinal surgery, if a surgeon is using an anterior approach, it is not possible to simply switch over to a posterior approach as taught by Lahille to operate the device, so the location where rotation can occur is very important to the type of surgery. Still further, it is noted that there is no suggestion or teaching in the references as how to combine the teachings of Nolan and Lahille into a workable device that can be operated either posteriorly or anteriorly.

The remaining claims that were not discussed above are dependent and are urged to be allowable, for the same reasons as noted for the claims from which they depend.

Again, the Nolan reference is a 102e reference and applicant reserves the right to swear back of this reference, if necessary.

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Serial No. 09/552,743

The Examiner is invited to contact the undersigned by telephone, if prosecution of this application can be expedited thereby.

Respectfully Submitted,



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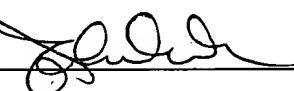
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By



September 10, 2003

(Date of Signature)